



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**MEMORANDUM**

**TO:** The Commission

**FROM:** Thomasena P. Duncan  
General Counsel

JUL 23 2008

Ann Marie Terzaken   
Associate General Counsel  
for Enforcement

**BY:** Dominique Dillenseger   
Attorney

**SUBJECT:** MUR 5840 (Ellen Simon for Congress, Ellen Simon)

**RE:** Disposition of Millionaires' Amendment Violations in MUR 5840

**I. BACKGROUND**

On August 1, 2007, the Commission found reason to believe that Ellen Simon (the "Candidate") and Ellen Simon for Congress (the "Committee") and its treasurer, (collectively "Respondents") violated 2 U.S.C. § 441a-1(b), a provision of the Millionaires' Amendment of the Act, by failing to timely file a 24-Hour Notice of Expenditure from the Candidate's personal funds. The Commission also found reason to believe that the Committee violated 2 U.S.C. § 434(b) by misreporting two loans from the Candidate and by failing to exercise best efforts in obtaining contributor information.

The Office of General Counsel mailed briefs to Respondents' counsel indicating that we were prepared to recommend that the Commission find probable cause to believe that Respondents violated the Act. Respondents did not submit response briefs, but requested a stay of the enforcement proceedings pending the Supreme Court's decision in *Davis v. FEC*.



On June 26, 2008, the Supreme Court ruled that the Millionaires' Amendment provisions of the Act, which governed certain self-financed candidacies for Congress, is unconstitutional *Davis v FEC*, 128 S Ct 2759 (2008). In light of this decision, we recommend that the Commission take no further action against Ellen Simon and Ellen Simon for Congress and Gael Summer, in his official capacity as treasurer ("Committee"), regarding the Commission's reason-to-believe findings that Ms Simon and the Committee violated 2 U S C § 441a-1(b) (Millionaires' Amendment). Because this was the Commission's only finding with respect to Ms Simon, we recommend that the Commission close the file as to her.

## **II. RECOMMENDATIONS**

- 1 Take no further action as to Ellen Simon for Congress and Gael Summer, in his official capacity as treasurer, in connection with 2 U S C § 441a-1(b)**
- 2 Take no further action as to Ellen Simon in connection with 2 U S C § 441a-1(b) and close the file as to Ms Simon**
- 3 Approve the appropriate letters**

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